



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: [REDACTED]

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number:
(202) 283-9455

NO PROTEST RECEIVED
Release to Manager, EO Determinations - Cincinnati

DATE: [REDACTED]

Employer Identification Number: [REDACTED]

SURNAME [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

Information presented discloses that you were incorporated on [REDACTED]. The Third Article of your Certificate of Incorporation states, among other things, that the purposes for which you were formed are to receive and distribute donations to aid, assist, further and advance the work of various Christian and charitable organizations. To further your purposes, you represent that you receive used automobiles donated by the general public. You state that advertisements are placed in local newspapers soliciting donations of automobiles to your organization.

You arrange to have these automobiles towed and repaired and ultimately after being appraised, these automobiles are sold to any willing buyer. The proceeds of the sales, less expenses for towing and repairs, are donated to Christian and charitable organizations. You state that you arrange to have these automobiles towed by independent towing companies and repairs are made to the automobiles by mechanics not in any way related to your organization. You lease a lot to store the automobiles before they are sold and indicate that all activities are done at cost and are otherwise at arm's-length.

[REDACTED] is your President/Administrator. You lease the first floor of the residence of [REDACTED] as your office where sales and other related activities are conducted. [REDACTED] is also compensated for his sales and other activities and you have other paid employees. Your sole source of financial support is proceeds received from the sale of donated automobiles, after payment of towing, repairs and other expenses. No other fundraisers have been implemented or are planned for the future.

Section 501(c)(3) of the Internal Revenue Code (the Code) provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, scientific or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (the regulations) provides that in order for an organization to be exempt as one described in section 501(c)(3) of the Code, it must be both organized and operated exclusively for one or more exempt purposes. Under section 1.501(c)(3)-1(d)(1)(i)(b) of the regulations, an exempt purpose includes a charitable purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in Code section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes relief of the poor and distressed.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945), the Court stated that "the presence of a single ... [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly ... [exempt] purposes."

Rev. Rul. 54-305, 1954-2 C.B. 127, involved an organization whose primary purpose is operation and maintenance of a purchasing agency for the benefit of its otherwise unrelated members who are exempt as charitable organizations. The ruling held that the organization did not qualify under section 101(6) of the Code (the predecessor to section 501(c)(3)) because its activities consisted primarily of the purchasing of supplies and the performance of other related services. The ruling further stated that such activities in themselves cannot be termed charitable, but are ordinary business activities.

Rev. Rul. 72-369, 1972-3 C.B. 245, deals with an organization formed to provide management and consulting services at cost to unrelated exempt organizations. This revenue ruling held that providing management and consulting services on a regular basis for a fee is a trade or business that is ordinarily carried on for profit. The fact that the services in this case were provided at cost and solely for exempt organizations was not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code.

Rev. Rul. 69-528, 1969-2 C.B. 127, describes an organization formed to provide investment services on a fee basis only to organizations exempt under section 501(c)(3) of the Code. The organization invested funds received from participating tax-exempt organizations. The service

organization was free from the control of the participating organizations and had absolute and uncontrolled discretion over investment policies. The revenue ruling held that the service organization did not qualify under section 501(c)(3) of the Code and stated that providing investment services on a regular basis for a fee is a trade or business ordinarily carried on for profit.

In Rev. Rul. 77-3, 1977-1 C.B. 140, a nonprofit organization that provides rental housing and related services at cost to a city for its use as free temporary housing for families whose homes have been destroyed by fire was found not to be a charitable organization exempt under section 501(c)(3) of the Code.

Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), involves an organization that operated restaurants and health food stores with the intention of furthering the religious work of the Seventh-Day Adventist Church as a health ministry. However, the Seventh Circuit held that these activities were primarily carried on for the purpose of conducting a commercial business enterprise. Therefore, the organization did not qualify for recognition of exemption under section 501(c)(3) of the Code.

Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. (1979), aff'd, 625 F.2d 804 (8th Cir. 1980) held that while selling prescriptions pharmaceuticals promotes health, pharmacies cannot qualify for recognition of exemption under section 501(c)(3) of the Code on that basis alone.

In Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978), a nonprofit corporation that assisted charitable organizations in their fund-raising activities by providing financial planning advice on charitable giving and tax planning to wealthy individuals was held not to qualify for exemption under section 501(c)(3) of the Code because its tax planning services were a substantial nonexempt activity enabling the corporation to provide commercially available services to wealthy individuals free of charge.

Section 1.501(c)(3)-1(e)(1) of the regulations states that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) of the Code.

Section 513(a) of the Code defines the term "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of the purpose or function constituting the basis for its exemption.

Section 1.513-1(a) of the regulations defines "unrelated trade or business taxable income" to mean gross income derived by an organization from any unrelated trade or business regularly carried on by it, less directly connected deductions and subject to certain modifications. Therefore, gross income from an exempt organization subject to the tax imposed by section 511 of the Code is includible in the computation of unrelated business taxable income if: (1) it is income from trade or business; (2) such trade or business is regularly carried on by the

organization; and (3) the conduct of such trade or business is not substantially related (other than through the production of funds) to the organization's performance of its exempt functions.

Section 1.513-1(b) of the regulations states that the phrase "trade or business" includes activities carried on for the production of income which possess the characteristics of trade or business within the meaning of section 162 of the Code. Section 1.513-1(c) of the regulations explains that "regularly carried on" has reference to the frequency and continuity with which the activities productive of the income are conducted and the manner in which they are pursued.

Section 1.513-1(d)(1) of the regulations states that the presence of the substantially related requirement necessitates an examination of the relationship between the business activities which generate the particular income in question—the activities, that is, of producing or distributing the goods or performing the services involved—and the accomplishment of the organization's exempt purposes.

Section 1.513-1(d)(2) of the regulations states that a trade or business is related to exempt purposes only where the conduct of the business activity has a causal relationship to the achievement of an exempt purpose, and is substantially related for purposes of section 513, only if the causal relationship is a substantial one. Thus, for the conduct of a trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes.

Section 1.513-1(d)(4) of the regulations states that gross income derived from charges for the promotion of exempt functions does not constitute gross income from the conduct of unrelated trade or business.

While you represent that your purposes are to receive and distribute donations to aid, assist, further and advance the work of various Christian and charitable organizations, the facts show that you are engaged in the nonexempt activity of soliciting, repairing and selling used cars in a manner that is indistinguishable from the activities of an ordinary commercial enterprise. See Living Faith, Inc. v. Commissioner, *supra*; Federation Pharmacy Services, Inc. v. Commissioner, *supra*; and Christian Stewardship Assistance, Inc. v. Commissioner, *supra*.

You operate out of the home of your President/Administrator, [REDACTED] where other for-profit business activities appear to be conducted. Your operations are similar to a used car lot. The fact that profits from the sale of the automobiles will be given to exempt organizations does not distinguish the sales themselves from similar sales of an ordinary commercial enterprise.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

[REDACTED]

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the [REDACTED] Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
TE/GE (T:EO:RA:T:1)
[REDACTED]
1111 Constitution Ave., N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]
(signed) [REDACTED]

[REDACTED]
Manager, Exempt Organizations
[REDACTED]